

Appl. No. 10/574191
Docket No. Z07918Q
Amdt. dated 01/31/2011
Reply to Office Action mailed on 06/29/2010
Customer No. 27752

REMARKS

Claim Status

Claims 1-9, 12, 13, 15-20, 22 and 23 are pending in the present application. No additional claims fee is believed to be due.

Claims 1 and 16 have been amended and have antecedent basis found in the specification US Application 2007/00433383, paragraph [0016] and Claim 13 is amended for clarity. No new matter is therefore been inserted into this application.

Rejection Under 35 USC §103(a) Over Magnus et al. (U.S. 2,423,245) in view of Floessholzer et al. (US Pub. No. 2006/0004383 A1) further in view of JP 2001-128728A.

Claims 1-9, 12, 13, 15-20 and 22-23 have been rejected under 35 USC §103(a) as being unpatentable over Magnus et al. (U.S. 2,423,245 or '245) in view of Floessholzer et al. (US Pub. No. 2006/0004383 A1 or '383) further in view JP 2001-128728A or '728. The latter reference is now combined with those previously cited. Although that reference was not part of the original basis of the first rejection, it is being now applied by the examiner to support the final rejection after it was translated and submitted by the applicants on April 9, 2010 in a supplemental IDS.

It is alleged that the combination of '245 and '383 together supply all the elements of the claim except that the motorized control of the take up roller of the presently claimed invention is not controlled by a pressure or contact switch. Instead '383 has only a means to disengage the motor from the roller to stop tape from being collected onto the take-up roller, for example when the user stops the device. The rejection, however, then goes on to state that this missing pressure or contact switch to control the motor as is done in the present invention is disclosed in '728. Therefore, the claimed invention obvious in light of these three combined references together. The applicants herein traverse the rejection of the amended claims.

As discussed in the pending application at paragraph [0016] the currently claimed invention moves forward across the skin as a result of the tape being collected onto the take-up roller, essentially acting as a drive mechanism for the apparatus. Traversal of the skin by the '728 apparatus, however, is not accomplished by such means. The pressure or

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contact switch in the housing of the epilator device disclosed by '728 is to achieve optimum rotational speed of the cylindrical epilator head. The head comprises typical cooperating fingers and anvils for grasping hair where upon rotating the head, the hair is plucked from the skin. The '728 applicant discloses at [0005] that the pressure sensor used in his device measures downward pressure of their epilator head on the skin. That pressure value is compared it to a preset value wherein the rotational speed of the epilator head is adjusted to an optimal speed to facilitate removing hair deeply from the skin to remove the entire follicle. The hair, therefore, takes longer to grow back and thereby lengthening the time necessary for repeating epilation.

The pressure switch disclosed in '728 adjusts the rotational speed of the epilation head. This rotation of the head does not control movement over the skin. Rather it's the operator that moves the device over the skin similar to the way a user would use an electric razor. One skilled in the art using the teaching of '728 would not be lead to the conclusion that the use of the pressure switch of '728 could be used to drive the presently claimed apparatus across the skin surface. Only through the use of hindsight of the present invention would such a conclusion be reached. Being that hindsight is not permitted to support the rejection of the presently amended claims, it is requested that the rejection is traversed.

Rejection Under 35 USC §103(a) Over Magnus et al. (U.S. 2,423,245) in view of Floessholzer et al. (US Pub. No. 2006/0004383 A1) further in view of Brown et al (US Pub. No. 2005/0234477).

Claims 16-20, 22 and 23 have been rejected under 35 USC §103(a) as being unpatentable over Magnus et al. (U.S. 2,423,245) in view of Floessholzer et al. (US Pub. No. 2006/0004383 A1) further in view of Brown et al (US Pub. No. 2005/0234477).

Brown or '477 is a similar device to '423 discussed above; skin care devices principally designed to remove layers of skin. The '477 device removes a sufficient amount of surface skin to diminish the appearance of discolorations including age spots, liver spots and other hormonally darkened skin; see page two paragraph [0017]. The burr disclosed therein is located at the distal end of the device and rotates and abrades (removes) the targeted skin spot. The applicants must rebut the assertion made in the last office action that Brown specifically discloses or even implies it is used for epilation. If,

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however, there is such disclosure it is respectfully requested that this disclosure be called out by the examiner.

Applicants contend there is no disclosure that this device is capable of plucking hair follicles from the skin. As was the case in '423 above, this reference is not analogous art and is incorrectly applied in the context of the rejection based on the captioned combined references. Even if '477 is applied in this rejection, it still does not make obvious the presently claimed invention. The office action states that the motor driving the abrasion burr is controlled using a "proximity switch" so the device need not be put down in order to turn it on and off. Referring to Figures 6A through 6D, clearly the proximity switch shown therein comprises a light sending element #126 and a light sensor #128. Upon blocking the sent beam of light with for example one's elbow, the light is reflected back wherein the sensor gathers it and turns the abrasion device on or off. Therefore, there is absolutely no skin contacting sensor inside the device. Since the '477 device is not operated by a pressure sensor as in the device of the present invention it cannot stand as teaching use of a pressure sensor in the device itself to operate the tape take-up reel that allows the gathering of and eventual plucking of hair follicles from the skin. It is requested that the obviousness rejection be immediately withdrawn.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the amendment(s) presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

BRAUN GMBH

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